

Roger L. Zissu (RZ 0973)
Richard Z. Lehv (RL 6097)
FROSS ZELNICK LEHRMAN
& ZISSU, P.C.
866 United Nations Plaza
New York, NY 10017
Tel: (212) 813-5900

Gregory L. Diskant
Rachael Kuilema Klein
Ravi Sitwala
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, New York 10036
Tel: 212-336-2000
Fax: 212-336-2222

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHNSON & JOHNSON and JOHNSON &
JOHNSON CONSUMER COMPANIES, INC.,

Plaintiffs

-against-

THE AMERICAN NATIONAL RED CROSS,
LEARNING CURVE INTERNATIONAL, INC.,
MAGLA PRODUCTS, LLC, WATER-JEL
TECHNOLOGIES, INC., and FIRST AID
ONLY, INC.,

Defendants.

Civil Action No. 07-CV-07061 (JSR)

**PLAINTIFFS' REPLY TO
COUNTERCLAIMS OF
DEFENDANT LEARNING CURVE
INTERNATIONAL, INC.**

Plaintiffs Johnson & Johnson (“J&J”) and Johnson & Johnson Consumer Companies (“JJCC” or collectively “Plaintiffs”), by their attorneys Fross Zelnick Lehrman & Zissu, P.C. and Patterson Belknap Webb & Tyler LLP, reply to the counterclaims (the “Counterclaims”) of Defendant Learning Curve International, Inc. (“Learning Curve”) included with its Answer, Affirmative Defenses and Counterclaims as follows:

RESPONSE TO PARTIES

1. Plaintiffs admit the allegations in paragraph 1 of the Counterclaims.
2. Plaintiffs admit the allegations in paragraph 2 of the Counterclaims.
3. Plaintiffs admit the allegations of paragraph 3 of the Counterclaims.

RESPONSE TO JURISDICTION

4. Plaintiffs admit the allegations in paragraph 4 of the Counterclaims.
5. Plaintiffs do not contest this Court's personal jurisdiction over J&J. Plaintiffs admit personal jurisdiction over JJCC. Plaintiffs do not currently contest supplemental jurisdiction. All other allegations in paragraph 5 are denied.

RESPONSE TO VENUE

6. Plaintiffs admit the allegations in paragraph 6 of the Counterclaims.

RESPONSE TO STATEMENT OF FACTS

7. Plaintiffs admit the allegations in the first sentence of paragraph 7 of the Counterclaims, refer the Court to the Hearings cited in the second sentence of paragraph 7 for the text thereof, and deny the allegations in the third sentence of paragraph 7.
8. Plaintiffs deny the allegations of paragraph 8 of the Counterclaims, except admit that there were other users of the red cross symbol, in addition to J&J, prior to 1905.
9. Plaintiffs deny the allegations of paragraph 9 of the Counterclaims.
10. Plaintiffs deny the allegations of paragraph 10 of the Counterclaims.

11. Plaintiffs deny the allegations of paragraph 11 of the Counterclaims.

RESPONSE TO FIRST COUNTERCLAIM

Declaratory Judgment of Violation of 18 U.S.C. § 706 Pursuant to 28 U.S.C. § 2201

12. Plaintiffs hereby repeat and reallege their answers to paragraphs 1 through 11 of the Counterclaims above as if fully set forth herein.

13. Plaintiffs admit the allegations of paragraph 13 of the Counterclaims.

14. Plaintiffs admit the allegations of paragraph 14 of the Counterclaims.

15. Plaintiffs admit the allegations of paragraph 15 of the Counterclaims.

16. Plaintiffs deny the allegations of paragraph 16 of the Counterclaims.

17. Plaintiffs deny the allegations of paragraph 17 of the Counterclaims.

18. Plaintiffs deny the allegations of paragraph 18 of the Counterclaims, and aver that Learning Curve is barred by 18 U.S.C. § 706 from using the red cross symbol and therefore cannot be harmed by J&J's assertion of rights in the red cross symbol.

19. Plaintiffs deny the allegations of paragraph 19 of the Counterclaims.

RESPONSE TO SECOND COUNTERCLAIM

Cancellation of Trademark Under 15 U.S.C. § 1119 and 15 U.S.C. 1064(3)

20. Plaintiffs hereby repeat and reallege their answers to paragraphs 1 through 19 of the Counterclaims above as if fully set forth herein.

21. Plaintiffs admit the allegations of paragraph 21 of the Counterclaims.

22. Plaintiffs admit the allegations of paragraph 22 of the Counterclaims.

23. Plaintiffs admit that Learning Curve brings certain claims in paragraph 23 of the Counterclaim, but deny that Learning Curve is entitled to the order it seeks.

24. Plaintiffs deny the allegations of paragraph 24 of the Counterclaims.

25. Plaintiffs deny the allegations of paragraph 25 of the Counterclaims.

26. Plaintiffs admit that J&J has asserted its rights against Learning Curve, as alleged in paragraph 26 of the Counterclaims, but denies that Learning Curve is entitled to the relief it seeks.

27. Plaintiffs deny the allegations of paragraph 27 of the Counterclaims.

AFFIRMATIVE DEFENSES

First Affirmative Defense

28. The counterclaims fail to state a claim upon which relief can be granted.

Second Affirmative Defense

29. Learning Curve's counterclaims are barred by the doctrine of unclean hands.

Third Affirmative Defense

30. Defendant Learning Curve's claims are barred by the doctrines of acquiescence and equitable estoppel.

Fourth Affirmative Defense

31. Defendant Learning Curve's claims are barred by the doctrine of estoppel.

Fifth Affirmative Defense

32. Defendant Learning Curve's claims are barred by the doctrine of laches.

Sixth Affirmative Defense

33. Defendant Learning Curve has failed to mitigate their damages, if any.

Seventh Affirmative Defense

34. The Counterclaims are barred by one or more applicable statutes of limitations.

WHEREFORE, Plaintiffs deny that Defendant Learning Curve is entitled to any injunctive, equitable, or other relief whatsoever, deny that Defendant Learning Curve is

entitled to any declaratory judgment or monetary judgment from Plaintiffs in any amount whatsoever, and request judgment dismissing the counterclaims, together with Plaintiffs' attorneys' fees and such other and further relief as the Court deems just and proper.

Dated: New York, NY

October 10, 2007

FROSS ZELNICK LEHRMAN & ZISSU,
P.C.

By: 

Roger L. Zissu (RZ 0973)
Richard Z. Lehv (RL 6097)
866 United Nations Plaza
New York, NY 10017
Tel. (212) 813-5900
Fax (212) 813-5901

PATTERSON BELKNAP WEBB &
TYLER LLP

Gregory L. Diskant
Rachael Kuilema Klein
Ravi Sitwala
1133 Avenue of the Americas
New York, New York 10036
Tel: 212-336-2000
Fax: 212-336-2222

Attorneys for Plaintiffs